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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1481

VINCENT IANNONE AND LESLIE N. SELLMAN,

Petitioners,

v.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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PETITION FOR WRIT OF CERTIORARI

Vincent Iannone and Leslie N. Sellman, Petitioners, pray that a Writ of Certiorari issue to review the judgment of the Court of Special Appeals of Maryland entered August 23, 1970, affirming convictions as to Indictment 4356 (Counts 2 and 3 re Petitioner Sellman and Counts 2 and 4 re Petitioner Iannone) of the 1968 Docket, Criminal Court of Baltimore City, in the case of Vincent Iannone and Leslie N. Sellman, Appellant, v. State of Maryland, Appellee, Number 564, September Term, 1969.

CITATIONS TO OPINIONS BELOW

The Opinion of the Court of Special Appeals of Maryland is unreported and is included as Appendix A to this

Petition. The Order of the Court of Appeals of Maryland is unreported and is attached as Exhibit B hereto.

JURISDICTION

The judgment of the Court of Special Appeals of Maryland sought to be reviewed was filed on August 23, 1970. The Order of the Court of Appeals of Maryland denying the Petition for Writ of Certiorari was entered on October 20, 1970. The jurisdiction of this Court is invoked under 28 U.S.C.S. 1257 (3) (an Application for an Extension of Time within which to file instant Petition was granted by the Court on January 11, 1971 extending the time until March 19, 1971).

REASONS FOR GRANTING THE WRIT

Petitioners, as reasons why the issuance of such a Writ is desirable and in the public interest asserts:

A. That the Petitioners are entitled to the protection of the Fourteenth Amendment of the Constitution of the United States; and the failure of the Court to protect this right created a constitutionally prejudicial error.

(1) In that a person must be properly arrested and that the search of the premises in which they may be must also be proper or the protection of a person afforded under the Fourteenth Amendment of the Constitution of the United States would otherwise thereby be denied.

STATEMENT OF QUESTIONS PRESENTED

The public interest in the administration of criminal justice calls for a determination by the Court of the issue presented in this case. The issue is whether or not a constitutional violation contributed to the conviction of the Petitioners in the Indictments in which they were charged.

The question presented here is whether the Court of Special Appeals of Maryland denied the Petitioners' rights under the Fourteenth Amendment of the Constitution of the United States in affirming the aforesaid convictions in that the Petitioners' rights were violated because the search warrant (included as Appendix C to this Petition) was permitted to stand and the Petitioners' timely application to strike and exclude all evidence secured thereunder was improperly denied; and as a result, there was an improper search as well as improper seizures and the Petitioners were improperly arrested.

STATEMENT OF THE CASE

Petitioners were indicted by the Grand Jury of Baltimore City on June 20, 1968, in one indictment charging them with violation of Article 27, Sections 360 and 361, i.e. keeping a room and permitting a room, apartment 910, to be kept for the purpose of selling lottery tickets. Also, indicted was one Carroll T. Glorioso (Indictment 4357 — also violating Article 27, Sections 360 and 361). Petitioners and Glorioso were tried before Judge J. Gilbert Prendergast without a jury on these indictments on November 18, 1969. The trial was concluded and reset for December 23, 1969 when, on said date, Judge Prendergast found the Petitioners and Glorioso guilty (Petitioner Iannone of the second and fourth counts of Indictment 4356; Petitioner Sellman of the second and third counts of Indictment 4356; and Glorioso guilty of the second and fourth counts of Indictment 4357). Judge Prendergast sentenced Petitioners to six months imprisonment each and a fine of One Thousand Dollars ($1,000) as to each, concurrent.

The Petitioners immediately filed an Appeal to the Court of Special Appeals of Maryland raising various contentions, one of which was that the application (affidavit)

for the warrant, shows on its face, no legal probable cause for the issuance of the search warrant to enter and search the described premises, apartment 910, Washington Park Apartments, 110 West Center Street, Baltimore, Maryland. Also the contention was made that Glorioso's arrest and search were illegal and hence the subsequent arrest and search of the Petitioners was illegal.

ARGUMENT

I.

THE COURT OF SPECIAL APPEALS OF MARYLAND DENIED THE PETITIONERS THE PROTECTION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY AFFIRMING THE LOWER COURT'S DECISION THAT THE ARREST AND SEARCH OF HE PREMISES (APARTMENT) IN WHICH THE PETITIONERS (AND GLORIOSO) WERE FOUND WAS VALID.

Petitioners contend their arrest and search were illegal.

In reviewing the testimony of the State's witnesses, it should be borne in mind that they were excluded and, therefore, did not hear the others testify.

On direct examination one Police Lieutenant Andrew stated that he saw F.B.I. Agent Faulkner go to the door of 910 and entering through an open door while brushing past Glorioso; that Lieutenant Andrew told Glorioso to go into the room; that when Glorioso remonstrated, Lieutenant Andrew told him, "I have a search warrant, you had one foot in and one foot out and you are coming in the room"; that he then presented the search warrant to Glorioso and Iannone and "then I observed the gambling paraphernalia on the table". Lieutenant Andrew admitted, on cross-examination that he did not see Glorioso committing a crime in the hallway or at the door to Apartment 910 and that he pushed Glorioso into the room in front of him. Lieutenant Andrew, further, admitted that he

knew the Search Warrant did not authorize a search of the body of Glorioso. F.B.I. Agent Faulkner testified that after he exited ahead of Lieutenant Andrew from the apartment across the hall, that "I saw Mr. Glorioso standing in the hallway in front of the door, immediately in front of the door to Apartment Number 910 and I recall opening the door and going in. And I passed him as I went in. I do not recall any part of his body being past the door." It is to be noted that Agent Faulkner's testimony directly contradicted Lieutenant Andrew on two vital points: a) That the agent, personally, opened the door to the Apartment; b) That when the Agent went past Glorioso, no part of Glorioso's body had gone through the door. A search of the body of Glorioso revealed a key to Apartment 910, but no evidence of gambling was found on his person. Excluding the key there was no other evidence that connected Glorioso with the apartment and the gambling paraphernalia found on the table.

The Court admitted into evidence the key found on the body of Glorioso and in ruling that his search under the Warrant was legal, seemed to find two bases for so holding. One was that as Agent Faulkner found Glorioso physically in front of the door in the hallway, it appeared to the Court that either the doorstep or the stairway or the area in front of the door was an appurtenance part of the premises, (Apartment 910) even though it was a public hallway. Secondly, that Lieutenant Andrew, as well as the agents, were there for the purpose of carrying out the Warrant; that they knew or suspected, and had probable cause to believe that a crime was being committed inside Apartment 910 and, therefore, seemingly had the right to search the body of Glorioso whether in or out of the Apartment.

It is submitted that the search of the body of Glorioso and thereafter the Petitioners, on either of these postulates was illegal. Section 551 of Article 27, under which the Search Warrant was issued, specifically, calls, "for the description either by name or with reasonable particularity the individual, building, apartment, premise, place or thing to be searched."

The Warrant in instant case describes only Apartment 910 as the object of the search and the directive of arrest is conditioned in the language of the Mandate of the Warrant "If upon execution there are found persons then and there engaged in the commission of a crime, to arrest those so participating."

As set forth in *Gattus v. State*, 204 Md. 589, "It (the warrant) is only valid if the search reveals the commission of an offense and in that event the arrest is for the offense revealed by the search. If the search is invalid, the arrest under the warrant must also be invalid."

It is clear that Glorioso was not committing a misdemeanor in the presence of the arresting officers when observed, either in the hallway or in front of Apartment 910 which would have enabled the officers to make an valid arrest. See *David v. State*, 208 Md. 384; *Griffin v. State*, 200 Md. 569.

It is equally clear that Glorioso could not have been legally detained, stopped or searched by the officers pursuant to the warrant, except if found inside Apartment 910 and there engaged in the commission of a crime. There being no evidence that he was found inside as a result of the execution of the warrant, and no evidence that he was engaged in the commission of any offense when pushed into the Aapartment, the search of his body was illegal and the key should not have been admitted into evidence. As

no other proof of his connection with the gambling paraphernalia in Apartment 910, except the key, was produced by the State, the Court committed reversible error and the judgment and sentence of Glorioso and, therefore, the Petitioners should be reversed.

II.

THE COURT OF SPECIAL APPEALS OF MARYLAND DENIED THE PETITIONERS THE PROTECTION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY AFFIRMING THE LOWER COURT'S DECISION THAT THE PETITIONERS' MOTION TO QUASH THE APPLICATION AND THE SEARCH WARRANT AND TO EXCLUDE ALL EVIDENCE SEIZED THEREUNDER — WERE LEGAL; BECAUSE THE FACTS RELATED IN THE APPLICATION FAILED TO SHOW LEGAL PROBABLE CAUSE FOR ISSUANCE.

The Application and the Warrant were issued pursuant to Article 27, Section 551 of the Annotated Code of Maryland, and before considering any factual aspects of the case, it should be borne in mind that as stated in *Smith v. State*, 191 Md. 329:

> "Any inquiry as to whether the affidavit on which the search warrant was based showed probable cause is confined to the affidavit alone." (Restated in *Burrell v. State*, 207 Md. 278 and *Tischler v. State*, 206 Md. 386.)

What then is sufficient probable cause, set forth in affidavit, which will permit the issuance of a valid search and seizure warrant? This question seems difficult to answer and recourse to Court decisions and legal writers is not very helpful in securing a final determination. As stated in *Goodman v. State*, 178 Md. 1:

> "Probable cause is defined by the Courts to be such an apparent set of facts that a discreet and prudent man would be led to the belief that the accused at the

time of the application for the warrant was in possession of property or that the premises sought to be searched contained property of a character for which a search under the warrant could be lawfully made."

In *Wood v. State,* 185 Md. 286:

"Probable cause is less than certainty but more than suspicion or possibility."

In *Frankel v. State,* 178 Md. 553:

"If the observation of the premises by the Officers, as disclosed in the application was sufficient to justify the belief that the law was being there violated, the existence of probable cause as contemplated by the statute is gratified."

In *Frankel v. State, supra,* in the facts set forth in the application for the warrant, two police officers who were the affiants watched a private dwelling house in Baltimore City on two separate days. On the first day, between the hours of 1:25 p.m., and 3:45 p.m., there were 21 separate occasions upon which one to four men at different intervals entered the premises through the back door while others attempted to enter but were refused admittance by a watchman. The second day of observation established that between 1:20 p.m., and 4:00 p.m., 27 men at various times, singly or in pairs, entered the premises and on both days of observation were admitted only after door was opened from within upon a given signal or rapping on the door or shutter.

In *Smith v. State, supra,* the application referred to a large number of people on days of observation going into the house carrying race horse forms and the officers called the telephone number located in the house and gave bets to someone over the phone.

In *Lucich v. State,* 194 Md. 512, observations were made of a motel, wherein the officer renting a cabin there during period of observation saw nine (9) different automobiles, bearing Maryland tags, with a man or woman in each car entering the motel, staying in the cabins for less than an hour and then leaving.

In *Fleming v. State,* 201 Md. 145, the application for search of a two-story brick building established known number writers going into the house, carrying brown paper bags, and meeting men who produced what were described as number slips before entering and after leaving the premises.

In *Goodman v. State, supra,* search and seizure warrant for entry into a confectionary store and second floor apartment. Observations showed 51 persons enter the store between 1:00 p.m. and 2:05 p.m., with two watchmen inside premises, one of whom would ring a buzzer to admit the persons identified to the second floor apartment.

In *Frantom v. State,* 195 Md. 164, search and seizure warrant for an Annapolis pool hall and apartments on second floor, at 10 Market Place, held insufficient probable cause when based upon observations of several known and convicted gamblers entering premises between hours of 12:30 p.m. and 1:30 p.m.

As stated by the Court:

> "It could hardly be seriously argued in the case at bar that seeing several known gamblers entering and leaving a pool room on four days between the hours of 12:30 p.m. and 1:30 p.m., was sufficient to warrant a man of prudence and caution in believing that a lottery and gambling was being permitted in the premises. These facts might show such a possibility but possibility is not enough."

* * * * * *

Cornelius on Search and Seizure, 2nd Edition, pages 375-446, contain a digest of 65 cases from various jurisdictions wherein 36 affidavits were held insufficient and 29 sufficient for probable cause. Close scrutiny of these cases and Md. Appellate decisions herein cited, as well as those set forth under Article 27, Section 551, of Annotated Code of Maryland does, however, clearly establish one vital requirement of the facts in the affidavit before a valid warrant can issue for search of a dwelling house.

The facts set out must be of such character as to justify the belief which is more than mere suspicion or possibility that the law is being violated in the premises.

As stated in *Weeks v. U. S.*, 232 U.S. 383:

> "The Fourth Amendment puts the Courts of the U.S. and Federal authorities in the exercise of their power and authority under limitations and restraints and forever secured the people, their persons, houses, papers and effects against all unreasonable charges and seizures under the guise of law."

In analyzing the Application for the Warrant it is interesting to note that while the Affiant, F.B.I. Agent Faulkner, set forth in detail facts concerning the activities of all three Appellants by name from April 16, 1968 to June 12, 1968, that he, apparently, did not consider these facts relating to Appellants to represent sufficient probable cause for him to request the Court to search their individual bodies for evidence of gambling. It is difficult, indeed, to reconcile Affiant's judgment of lack of probable cause to search the three Appellants, yet find upon the same facts as to their comings and goings that there was sufficient probable cause in the Application for the Warrant to search Apartment 910. In this connection, there is only one observation of any significance. On May 31, 1968, while standing in the

public hallway in front of Apartment 910, Affiant heard a male voice inside Apartment 910 stating, "all we can take is $200.00", he further heard the sound of an adding machine, and approximately 1 hour and 5 minutes later heard a male voice inside Apartment 910 stating the words "lay off".

The other facts in the Application deal with the information from an old reliable informant as to Sellman and Iannone going to rent an apartment somewhere in Baltimore for gambling, observations of Glorioso in the general area of Apartment 910 on four occasions and records of The C & P Telephone Company of phone calls made from the Apartment to San Juan, Puerto Rico and Washington, D.C. It is pertinent that none of the observations has any of the Appellants entering or leaving Apartment 910.

CONCLUSION

For the reasons stated above, certiorari should issue to the Court of Special Appeals of Maryland as to Indictment 4356 of the 1968 Docket of the Criminal Court of Baltimore City.

Respectfully submitted,

MARSHALL A. LEVIN,

Attorney for Petitioners.

S64 Sept Term 1969

APPENDIX A

Court of Special Appeals of Maryland

MURPHY, C. J.—

On June 13, 1968 a warrant was issued authorizing search of apartment 910 of the Washington Park Apartments in Baltimore, for illegal lottery slips and related gambling paraphernalia. The warrant was executed the same day and resulted in the seizure of evidence indicating that the lottery laws were being violated on the premises. Appellants were subsequently charged with various lottery offenses and the incriminating evidence seized under the warrant was introduced against them at their joint court trial. Appellants Iannone and Glorioso were each convicted of keeping a room (apartment 910) for the purpose of selling lottery tickets and possession of lottery slips. Appellant Sellman was convicted of keeping and permitting a room (apartment 910) to be kept for the purpose of selling lottery tickets. Appellants jointly contend on appeal that the search warrant was issued without probable cause and was therefore invalid.

In the application for the warrant, the affiant, an F.B.I. Agent, recited that "a confidential informant who has furnished information which has proven to be reliable in the past" advised that Leslie Sellman was employed by Vincent Iannone, operator of the Atlas Vending Company; that two weeks prior to April 16, 1968, the informant was told by Sellman, who lived at 1210 North Calvert Street, that he had been given money by Tony Iannone to rent and furnish an apartment somewhere in Baltimore for the purpose of booking numbers; that on May 6, 1968, a representative of a furniture rental company advised the affiant that Sellman had rented furniture for an apartment at 111 West Centre Street (the Washington Park Apartments); that on May 7 and 22, 1968, representatives of the Washington Park Apartments advised that Sellman and Tony Iannone had together rented apartment 910 for one year; that on May 31, 1968, the affiant was standing in the public hall in front of apartment 910 at 4:35 p.m. when he

overheard a male voice inside the apartment say "All we can take is $200.00,' followed by the sound of an adding machine; that on the same day, the affiant heard a male voice inside apartment 910 use the words "lay off"; that at 5:40 p.m. the same day two males left apartment 910 and entered separate Cadillac automobiles, one of which was registered to the Atlas Vending Company; that on June 5, 6, 7 and 10 these same men, one of whom interim investigation revealed to be Glorioso, were again observed "in the vicinity" of apartment 910; that Glorioso had previously been convicted on gambling charges in 1966; that Sellman had previously been arrested in Philadelphia and Las Vegas; that the telephone in apartment 910 was listed to Sellman and a number of long distance calls had been made therefrom, including calls to a Washington number listed to two named individuals arrested on gambling charges in January, 1968 and known to the Intelligence Unit of Internal Revenue Service to be conducting a large scale gambling operation in Washington; and that on June 12, 1968, Glorioso was observed to park his car, "conceal sheets of white paper" under the front of his shirt, and then go to the vicinity of apartment 910. On the basis of these allegations, the affiant concluded that gambling activity was being conducted on an interstate basis in apartment 910.

That a search warrant may properly issue based on hearsay information not reflecting the direct personal observations of the affiant is well settled, so long as the magistrate is informed of some of the underlying circumstances from which the affiant could reasonably conclude that the hearsay information was reliable and that the items sought to be seized were within the place to be searched. *Grimm v. State*, 6 Md. App. 321; *Scott v. State*, 1 Md. App. 481. We think it clear that an undisclosed informant's reliability is not established by the affiant's mere unsupported and unparticularized conclusory assertion that he has "furnished information which has proven to be reliable in the past." *See Aguilar v. Texas*, 378 U.S. 108; *Gatewood v. State*, 244 Md. 609; *Frey v. State*, 3 Md. App. 38. But

where, as here, the information provided by the informer's tip is corroborated by independent police work undertaken by the affiant, the details of which are recited in the warrant application, we think the informer's tip, together with the other allegations in the warrant, may be collectively considered in determining whether probable cause existed for the issuance of the warrant.[1] *See Spinelli v. United States,* 391 U.S. 933; *Price v. State,* 7 Md. App. 131. Clearly, the conversation personally overheard by the affiant emanating from apartment 910 on May 31, 1968 provided strong corroboration of the informer's tip; this fact, viewed in the light of the other recitations in the affidavit, heretofore set forth, provided far more than mere suspicion that the lottery laws were being violated on the premises. Of course, only the probability, and not a *prima facie* showing of criminal activity is the standard of probable cause. *Beck v. Ohio,* 379 U.S. 89; *Cornish v. State,* 6 Md. App. 167. Equally clear is the principle that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense. *United States v. Ventresca,* 380 U.S. 102; that the determination of a magistrate that probable cause exists should be paid great deference by reviewing courts, *Jones v. United States,* 362 U.S. 257; and that when determining whether an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded to warrants, *United States v. Ventresca, supra.* We conclude, within this constitutional framework, that the search warrant was properly issued.

Appellant Glorioso separately contends that his arrest was illegal and that evidence seized from his person, namely a key to apartment 910, was improperly introduced in evidence at his trial. The substantive evidence testimonially adduced at the trial by the State showed that Lieutenant George Andrew of the Baltimore City Police

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[1] The informer's reliability can never be established *solely* by reason of the fact that his information proved accurate when acted upon. *Bolesta v. State,* 9 Md. App. 408.

Department, and F.B.I. Agent David Faulkner, were in the apartment across the hall from apartment 910 on June 13, 1968 preparing to execute the search warrant; that through a peephole, Glorioso was observed to knock at the door of apartment 910; that a man's voice from within the apartment asked "Who is it," to which Glorioso responded "It's me"; and that thereafter "there was a sound of door unlocking, a barrier being let down from inside the apartment, and the latch being taken off the door." According to Agent Faulkner's testimony, he then went into the hall and opened the door to apartment 910 and entered. According to Andrew's testimony, he followed Agent Faulkner, and observed that Glorioso was "partly in the door and partly out"; that he had taken one step into the apartment. Andrew admitted pushing Glorioso the rest of the way into apartment 910. The appellant Iannone was the only other person in the apartment. The police observed gambling paraphernalia throughout the apartment in plain view. The door to the apartment had been reinforced by two-by-fours. Several minutes after the officers had entered, they searched Glorioso's person and found a key to the apartment in his trousers.

The trial court found Glorioso's arrest and subsequent search to be lawful on alternative grounds. It concluded that because there was evidence showing that Glorioso had a foot in the apartment, he was properly searched as a participant in the criminal activities there observed. It further ruled that even if Glorioso was not in the apartment, he was in the hallway, which was appurtenant to the apartment and constituted part of the premises authorized by the warrant to be searched.

We held in *Salmon v. State*, 2 Md. App. 513, that a search warrant authorizes a search of persons, places or things, as particularized in the warrant, for specifically designated property, unlawfully obtained or held, or of evidence of the commission of the crime, including items relating thereto which are purely evidentiary in nature; that a search warrant does not operate as an arrest warrant; that the directive to make an arrest customarily included as one

of the commands of the search warrant is a conditional one — valid only if the search reveals the commission of an offense, in which event the arrest is for the offense revealed by the search. It is thus clear that officers armed with a search warrant for particular premises, as here, are not authorized to search all persons found therein. *See Denikos v. State,* 9 Md. App. ..... Nor would the command of the search warrant to arrest and search all persons participating in the criminal activities support a search of one on the premises who had not committed a crime in the presence of the searching officers. *See Haley v. State,* 7 Md. App. 18.

But whether Glorioso was named in the warrant or not, or whether he was lawfully on the premises to be searched or not, or whether the premises to be searched included the public hallway or not are questions simply beclouding the real issue of whether, under the circumstances, Glorioso's arrest and the subsequent search of his person were lawful. We think they were. A warrantless arrest by a police officer is valid where he has probable cause to believe that a misdemeanor has been or is being committed in his presence or view and that the arrestee is the misdemeanant. *Robinson v. State,* 4 Md. App. 515. That the police had probable cause to believe that the lottery laws were being violated in apartment 910 (a misdemeanor) is clear. They were preparing to execute the warrant when Glorioso knocked on the door and made his identity known simply by stating "It's me." By force alone of that message the reinforced door to the apartment was in the process of being readied for opening when the police taking advantage of the opportunity thus afforded them, lawfully gained access to the apartment. Seeing lottery paraphernalia in plain view as they entered the apartment, the police had probable cause to believe that because of Glorioso's obvious clandestine identification with the apartment, he was a participant in the misdemeanor being committed in their presence; indeed, only seconds before entering the apartment, Glorioso had demonstrated to the officers that he was so well known in the apartment that a simple "It's me" greeting sufficed to permit him entrance

through the reinforced door. As stated in *Davids v. State*, 208 Md. 377, a crime is committed in the presence of an officer when his senses afford him knowledge that such is a fact; and that where some evidence of a commission of a misdemeanor reaches an officer through his senses, and it is augmented by other strongly persuasive facts in his possession, all of which is sufficient to convey virtual knowledge to any normal mind that the misdemeanor is then being committed, the officer may act upon such information as being tantamount to actual knowledge that the misdemeanor is being committed in his presence.[2] Within these rules, we conclude that appellant was lawfully arrested and that the subsequent search of his person incident thereto was likewise lawful.

Judgments affirmed; costs to be paid by appellants.

APPENDIX B

In The
Court of Appeals of Maryland

Miscellaneous Docket No. 203
September Term, 1970

(No. 564, September Term, 1969
Court of Special Appeals)

Vincent Iannone and Leslie N. Sellman

v.

State of Maryland

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[2] The affidavit upon which a search warrant is based is not substantive evidence at the trial. *Noe v. State*, 202 Md. 247; *Haley v. State*, *supra*. While the affidavit contained recitations showing Glorioso's involvement with the apartment on May 31 and June 5, 6, 7, and 10, 1968, no substantive evidence thereof was adduced at the trial in support of the legality of his arrest. The only evidence at trial concerning his connection with apartment 910, and all that we here consider, is that showing his activity on the day of his arrest.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied.

/s/ HALL HAMMOND,
Chief Judge.

(Seal of Court)
Date: October 20, 1970.

APPENDIX C

Supreme Bench
or
Municipal Court
of
Baltimore City

Operations Bureau
Search and Seizure Warrant
Police Department Form 67/187

To: Any Police Officer of Baltimore City:

Affidavit having been made before me by (a) David E. Faulkner and Marion Wright, Special Agents, Federal Bureau of Investigation that (they) (have) reason to believe that on the premises known as (b) Apartment 910, Washington Park Apartments, 111 West Center Street in the City of Baltimore, there is now being concealed certain property, namely; (c) Lottery slips and related gambling paraphernalia which is (in violation of the Laws of Maryland) pertaining to (d) Annotated Code of Maryland, Article 27, Sections 356-358 and 360-361 (Lotteries) and I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are therefore commanded, with the necessary and proper assistants, to search forthwith the (premises) herein above described for the property specified, executing this warrant and making the search; and if the property be found there, to seize it; and if upon execution of this warrant, there are found persons then and there engaged in the commission of a crime, arrest those so participating; leaving a copy of this warrant with an inventory of the property seized and returning copy of said warrant and inventory, if any, to me within five days after execution of this warrant; or, if not served, to return this warrant to me within five days after its expiration, as required by law.

Dated this (e) 13th day of June 1968.

Signed JOSEPH L. CARTER,

Judge.

Police Department
City of Baltimore

Operations Bureau
Affidavit
Form 67/189

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

David E. Faulkner, Special Agent of the Federal Bureau of Investigation deposes and says that on April 16, 1968, a confidential informant who has furnished information which has proven to be reliable in the past, advised the following:

That Leslie Neil Sellman, also known as Leslie Mazer and Leslie Musto, was employed by Vincent and Tony Iannone, who by the informant's personal knowledge, operate the Atlas Vending Company of 322 West Baltimore Street, and that Sellman was there living at an apartment in the 1200 block of North Calvert Street. About two weeks prior to April 16, 1968, Sellman had personally advised the confidential informant that he, Sellman, had been given money by Tony Iannone to rent an apartment somewhere

in Baltimore for the purposes of booking numbers. Also that Iannone had given Sellman money to purchase furniture to furnish the apartment. However, Sellman stated to the informant that he kept the money and rented the furniture for this apartment. On April 16, 1968 a check of the apartment at 1210 North Calvert Street disclosed that one of the mail boxes contained the names Mikalajunas, Bartlett and Sellman.

On April 17, 1968 Sellman was observed at the apartment at 1210 North Calvert Street.

On May 6, 1968 Edward Jutras Aaron Rents, Inc., 7350 Harford Road, advised your affiant that on March 6, 1968 Leslie Sellman had rented furniture for an apartment at 111 West Center Street.

On May 7, 1968 Kathy Gibbons, Manager, Washington Park Apartments, 111 West Center Street, advised that Leslie Sellman had rented apartments 910 in the early part of March, 1968, signing a one year contract.

On May 22, 1968 Catherine Menkel, Desk Clerk, Washington Park Apartments, 111 West Center Street, advised that in early March she had rented apartment 910 to Leslie Sellman, the tenant, and one other individual. Mrs. Menkel identified a photograph of Tony Iannone and Leslie Sellman as the two individuals to whom she referred. Mrs. Menkel stated that the man identified as Tony Iannone paid her $100 as a deposit and made the agreement with her for the apartment.

The individual identified as Leslie Sellman is identical with Leslie Neil Mazer, F.B.I. No. 514658-C, who has been arrested in Philadelphia, Pennsylvania under the name Leslie Musto, and in Las Vegas, Nevada, under the name Leslie Neil Mazer.

On May 31, 1968 while standing in the public hall in front of apartment 910, 111 West Center Street, at 4:35 p.m., your affiant heard a male voice inside apartment 910 state, "All we can take is $200.00." The sound of what appeared to be an adding machine was also heard to be coming from inside this room. Thereafter, prior to 5:40

p.m. your affiant heard a male voice inside apartment 910 state the words "lay off". At about 5:40 p.m. two white males were observed leaving this apartment. Outside of the building one of the white males entered a 1968 Lincoln automobile, temporary Maryland license number 176511. The other individual entered a 1968 Cadillac, license number unknown. The Department of Motor Vehicles advised your affiant that this license was registered to Atlas Vending Company, 1109 Hollen Road.

On June 5, 6, 7 and 10, 1968 an observation in the vicinity of apartment 910, 111 West Center Street, revealed the presence of both of the individuals observed on May 31, 1968. It is noted that on all of these dates there was no activity prior to 1:30 p.m. and on June 5, 1968, individuals had left the apartment by 6:02 p.m.

On June 6, 1968 Special Agent Marion Wright of the Federal Bureau of Investigation advised your affiant that the individual had, after leaving the apartment house at 111 West Center Street, entered the 1968 Cadillac. It was registered to Carroll Glorioso. Your affiant identified a photograph of Carroll Glorioso as being identical with the individual seen in the vicinity of apartment 910 on May 13, 1968 and June 5, 6, 7 and 10, 1968. Carroll Glorioso was arrested by the Baltimore Police Department on October 7, 1965 on charges of lottery in a raid on the Club Diamond, 600 East Baltimore Street, of which he was part owner. The Baltimore News-American, in an article appearing on January 5, 1966, advised that Glorioso was found guilty of gambling charges and given a three month city jail term by Judge Foster.

A check of the records of the C & P Telephone Company reveal that the telephone number for Leslie Sellman, apartment 910, 111 West Center Street is 837—5861. Records indicate that long distance calls have been made from this telephone during the months of April and May, 1968 to San Juan, Puerto Rico, Washington, D. C. and Pennsylvania. The number called in Washington, D. C. is 628—6454. On June 12, 1968, your affiant was advised by the Federal Bureau of Investigation, Washington, D. C. that

telephone number 628—6454 is listed to Billy's Restaurant, 1025 Vermont Avenue, N.W. Your affiant was further advised that the owner of Billy's Restaurant, Richard A. McCaleb and David F. McGowan, an associate of McCaleb's, were arrested by Internal Revenue agents in Alexandria, Virginia on gambling charges in January, 1968.

The F.B.I. in Washington, D.C. was advised by the Intelligence Unit of the Internal Revenue Service that McCaleb and McGowan are conducting a large scale operation in the Washington, D.C. area which includes sports bets, horse bets and numbers. The F.B.I., Washington, D.C. also advised that an informant of theirs advised that a gambling crowd hangs out at Billy's Restaurant, 1025 Vermont Avenue, N.W., Washington, D.C. This above activity was reported being conducted in March, 1968 at 1025 Vermont Avenue, N.W., Washington, D.C.

About 1:15 p.m. June 12, 1968, Carroll Glorioso was observed to park his 1968 Cadillac in the All Right Parking Lot at Center and Cathedral Streets. Just before leaving his auto Glorioso was observed, by your affiant, to conceal sheets of white paper under the front of the yellow sport shirt he was wearing. Within a few minutes, Glorioso was observed on the 9th floor of the apartment building at 111 West Center Street in the vicinity of Apartment 910.

Your affiant, David E. Faulkner, has been a Special Agent of the Federal Bureau of Investigation for 3½ years, specializing in gambling investigations for the past 10 months. It is the opinion of this affiant that gambling activity is being conducted, on an interstate basis, in apartment 910, 111 West Center Street.

/S/ DAVID E. FAULKNER,

Special Agent—Federal Bureau of Investigation,

/S/ MARION M. WRIGHT,

Special Agent—Federal Bureau of Investigation,

/S/ JOSEPH CARTER,

Judge.